

information, in the format to be selected by the applicant:

[FR Doc. 80-12126 Filed 4-18-80; 8:45 am]
BILLING CODE 4110-02-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[Docket No. BC 78-264; RM 3121; RM-3267; RM-3268; RM-3269]

Radio Broadcast Services; FM Broadcast Assignment to Carthage and Whitehouse, Tex.

AGENCY: Federal Communications Commission.

ACTION: Report and order (final rule).

SUMMARY: This action assigns Channel 257A at Whitehouse, Texas, in response to a request by Smith County Broadcasters. Also, Channel 255 is assigned to Carthage, Texas, pursuant to a request by Bev E. Brown. Both assignments would provide a first fulltime local service. Conflicting requests for the assignment of Channel 257A at either Tyler, Texas, or Gladewater, Texas, have been denied.

EFFECTIVE DATE: May 23, 1980.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: April 2, 1980.

Released: April 11, 1980.

By the Chief, Policy and Rules Division:

In the Matter of Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Whitehouse, Tyler, Carthage,¹ and Gladewater,¹ Texas); BC Docket No. 78-264; RM-3121; RM-3267; ² RM-3268; ³ RM-3269 ³ Report and Order (Proceeding Terminated).

1. The Commission has before it the *Notice of Proposed Rulemaking* 43 FR 38058, released August 21, 1978, proposing to assign Channel 257A to Tyler, Texas, as its fourth FM assignment. Comments in support were filed by Glenn and Virginia Hine ("Hines"), residents of Tyler. Counterproposals were accepted from (1) Tyler Broadcasting Company ("Tyler B/C"), licensee of Stations KZEY (AM) and KROZ (FM), Tyler, and Orman L. Kimsbrough d/b/a Gemini Enterprises ("Gemini"), licensee of Station KEES

(AM), Gladewater, Texas, suggesting that Channel 257A be assigned to Gladewater instead (RM-3268)³; (2) Bev E. Brown ("Brown"), licensee of Station KGAS (AM), Carthage, Texas, requesting the assignment of Channel 255 to Carthage (RM-3269)⁴ and (3) Smith County Broadcasters ("Smith County"), licensee of Station WTBB (AM), Tyler and the original petitioners in this proceeding, have proposed, as they did in their original petition, that Channel 257A be assigned to Whitehouse, Texas (RM-3267). Reply comments were submitted by Hines and jointly by Smith County and Brown.⁵

2. The *Notice* proposed to assign Channel 257A to Tyler despite the fact that Smith County had requested its assignment to Whitehouse as a first local service there. The Commission decided that due to Whitehouse's proximity to Tyler (14 kilometers (9 miles)), its suburban character and the availability of its use at Whitehouse under the Commission's 10-mile rule, § 73.203(b), its allocation to Tyler would be preferable. However, the Commission recognized that a Tyler assignment might not be possible because spacing requirements may not permit the provision of a city grade signal to all of Tyler. Information on this matter was requested. In addition, the availability of alternate channels to precluded communities was to be documented.

3. Whitehouse (pop. 1,245)⁶, in Smith County (pop. 97,096), is located approximately 14 kilometers (9 miles) south of Tyler, Texas.

4. Tyler (pop. 57,770), seat of Smith County (pop. 97,096), is located approximately 150 kilometers (92 miles) southeast of Dallas, Texas. It has 4 AM and 3 FM stations in operation.

5. Gladewater (pop. 5,574) is located in Gregg (75,929) and Upshur (20,976) Counties, approximately 40 kilometers (25 miles) northeast of Tyler. It is provided local service by AM Station KEES (fulltime authorized).

³ Gladewater and Tyler are 40 kilometers (25 miles) apart. The required spacing for Class A co-channels is 104 kilometers (65 miles).

⁴ Brown previously requested in the alternative that Channel 257A be assigned to Carthage. However, since that proposal conflicted with proposals for the same assignment at Whitehouse and at Gladewater, Texas, only the Channel 255 proposal has been pursued. Channel 255 would conflict only with the Gladewater proposal in that the communities are 70 kilometers (40 miles) apart and the required spacing is 104 kilometers (65 miles).

⁵ Hines' reply was filed one day late. However, we have accepted the pleading for consideration since we do not believe any prejudice will result therefrom.

⁶ Population figures are taken from the 1970 U.S. Census.

6. Carthage (pop. 5,392) is the seat of Panola County (pop. 15,894), approximately 90 kilometers (55 miles) east southeast of Tyler. It has one local radio station (KGAS (AM)) daytime-only.

7. Hines, while stating that there is a need for another Tyler station and that they would apply if the Commission's proposal were adopted failed to provide data which would indicate that the required signal strength could be provided to Tyler.

8. In opposition to the Tyler proposal, Tyler B/C argued that no showing of need for an additional Tyler station has been demonstrated. The city of Tyler is said to have seven radio stations already and the proposed assignment would offer no new service to unserved or underserved areas. On the other hand, the proposed Tyler assignment would preclude the assignment of a first FM channel to Gladewater where Tyler B/C urges that Channel 257A be allotted. We are told that no other FM channel is available for assignment there and the assignment would provide for a first fulltime local service.⁷ Gladewater is described as a growing community (1978 estimated pop. 7,000) that serves as a transportation center, including train, bus, and airplane travel. Industries consist of clothing, small machinery, recreational equipment, oil and cattle farming. A local newspaper publishes twice weekly. Tyler B/C has also attached supporting letters from community leaders. Gemini agrees that Gladewater is more deserving of the Channel 257A assignment than Tyler which it describes as adequately served and states it also would apply for a Gladewater FM station if the assignment is granted.

9. Smith County, the original proponent for a Whitehouse assignment offered a showing that purports to show there is no available site meeting the spacing requirements which would provide a city-grade signal over all of Tyler. For that reason it again urged that Channel 257A be assigned to Whitehouse. In this regard, Smith County provides indications of community growth such as building permits, bank deposits and school enrollments. In addition, a short history of the community and its influence in the subject area is discussed. Smith County argues that Whitehouse's proximity to Tyler should not, in itself, serve as an obstacle because Whitehouse is an independent community from Tyler and has separate

¹ These communities have been added to the caption.

² These petitions have been added to the caption.

⁷ Since that pleading was filed, Gladewater's AM station (KEES) has been granted authority to operate at night.

needs.⁸ As to the availability of alternate channels to precluded communities, we are told that Channel 272A could be assigned to either Troup or Overton, Texas. However, our staff could not confirm this assertion. No alternate channel is said to be available at Big Sandy, Texas. As for Gladewater, it avers that site selection is limited, unsuitable near the Gladewater airport and subject to undesirable terrain features. Nevertheless, we are asked to ignore preclusion as a factor because the request is for a first broadcast outlet.⁹ However, our policy with regard to preclusion clearly states that suburban communities are treated differently than more isolated communities for a proposed assignment's preclusive impact¹⁰ and preclusion is a factor we take into account in comparing mutually exclusive proposals.

10. Brown urges that Channel 255 be assigned to Carthage. He has, in combination with Smith County, proposed a plan whereby both Whitehouse and Carthage could each receive a first fulltime local aural service albeit at the expense of Gladewater. In support, Brown/Smith County state that Carthage itself is of equal population with Gladewater, but whereas Carthage has daytime-only AM service, Gladewater has fulltime local service authorized. Although a Class C channel is not generally assigned to communities the size of Carthage, no other channels are said to be available for assignment. The Gladewater conflict cannot be avoided if Carthage is to be assigned a channel. Brown asserts that Carthage is an isolated community (the closest larger city is Marshall, Texas, approximately 40 kilometers (25 miles) away).

11. In its reply comments, Hines attempted to demonstrate that a Tyler assignment is feasible at a site east of the city. However, we consider the showing marginal in that the small open area indicated is bounded by a 104.5 mile spacing arc and a 8.25 mile signal contour. The curves we use to measure the predicted field intensity of a signal (§§ 73.211(b), 73.313 (a)-(e), 73.314, 73.315(a) and 73.333 of the Commission's rules) provides 8 miles for a Class A station. It would be necessary for a proponent to take actual measurements to overcome this presumption. Without this information it cannot be concluded that the required signal strength would

be provided to Tyler. Certainly, under the Commission's priorities, a first local service at Whitehouse would be favored over a 4th FM and 8th local station at Tyler. Although we expressed some doubt as to Whitehouse's need for an FM station in the *Notice*, we now find that sufficient information has been provided to justify a Whitehouse assignment and that to use the 10-mile rule to accomplish this service would offer no benefit.

12. We are therefore left with conflicting requests for Channel 257A at Gladewater (Tyler B/C/Gemini) or for both Whitehouse and Carthage (Ch. 255) (Smith County/Brown) with site restrictions. In a non-comparative case, the requested Gladewater assignment would have merit. However, when compared, Gladewater has fulltime service authorized while Carthage has only daytime local service and Whitehouse has none. Furthermore, the provision of two services at two communities (Whitehouse and Carthage) is to be favored over the single FM service to be provided at Gladewater. Preclusion would not be significantly greater for the Whitehouse assignment than for the Gladewater proposal. Therefore, we find that the Whitehouse and Carthage proposals should be adopted. A site restriction will be necessary at Carthage of approximately 22.5 kilometers (14 miles) east.

13. Accordingly, it is ordered, That effective May 23, 1980, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, is amended with respect to the communities listed below:

City	Channel No.
Carthage, Texas.....	255
Whitehouse, Texas.....	257A

14. Authority for the action taken herein is contained in Sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Section 0.261 of the Commission's Rules.

15. It is further ordered, That this proceeding is terminated.

16. For further information concerning this proceeding, contact Mark N. Lipp, Broadcast Bureau, (202) 632-7792.

(Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082; 47 U.S.C. 154, 155, 303.)

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 80-12107 Filed 4-18-80; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 215

[Docket Number RSFC-6, Notice 3]

Railroad Freight Car Safety Standards

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This document amends the final rule published on December 31, 1979 (44 FR 77328), which revised the Railroad Freight Car Safety Standards (49 CFR Part 215).

The amendments relate to pre-departure inspections; defective cars received in interchange; defective roller bearing; stenciling of maintenance-of-way equipment; and door safety hangers. This action is taken by FRA in response to two petitions for reconsideration of the final rule.

EFFECTIVE DATE: This amendment becomes effective on June 1, 1980. However, prior compliance is authorized and encouraged.

FOR FURTHER INFORMATION CONTACT: Principal Program Person: Rolf Mowatt-Larssen, Office of Safety, Federal Railroad Administration, Room 7315, 400 Seventh Street SW., Washington, DC 20590, phone 202-426-0924.

Principal Attorney: Edward F. Conway, Jr., Office of Chief Counsel, Federal Railroad Administration, Room 8209, 400 Seventh Street SW., Washington, DC 20590, 202-426-8836.

SUPPLEMENTARY INFORMATION:

Background

Regulatory Reform

Pursuant to Executive Order 12044, FRA published a final rule revising the Freight Car Safety Standards on December 31, 1979 (44 FR 77323). After publication of the final rule, FRA received petitions for reconsideration from the Railway Labor Executives Association (RLEA) and the Association of American Railroads (AAR). This publication announces amendments to the final rule in response to the concerns expressed by petitioners.

The following is an explanation of the amendments made by FRA in response to those petitions. The sequence of changes discussed generally corresponds to the order in which they appear in the text of the final rule. However, pre-departure inspections and related issues are discussed first because they are of major concern to both petitioners.

⁸ Citing *Saegertown, Pa.*, Dkt. 20812, 41 FR 44414, 38 R.R. 2d 913 (1976).

⁹ Citing *Denair, Calif.*, Dkt. 21411, 43 FR 8805, 42 R.R. 2d 503 (1978).

¹⁰ See *Policy Statement to Govern Requests for Additional FM Assignments*, 8 F.C.C. 2d 79 (1967).

I. Pre-Departure Inspections and Related Issues. Both AAR and RLEA requested that FRA reconsider § 215.13 (pre-departure inspection) and § 215.11 (designation of qualified persons).

AAR suggested that the pre-departure inspection requirement be withdrawn. Alternatively, AAR requested that the rule be rewritten to reinstate the two-level inspection provisions of the former standards. Under former § 215.9(b), a railroad was permitted to move defective cars from locations where a designated inspector is not on duty if available personnel determine that the car is safe to move to the next location where a designated inspector is on duty.

RLEA's concern with § 215.13 focused on the qualifications that FRA should require for the person designated to conduct the pre-departure inspection. RLEA requested that the designated inspector have a level of training and experience equal to that of a journeyman carman.

Sections 215.13 and 215.11, as amended in this notice, prescribe a modified two-level inspection. A complete inspection for compliance with all provisions of the Freight Car Safety Standards will be required to be conducted by a designated inspector at locations where one is on duty to inspect freight cars. At other locations, a pre-departure inspection shall be made by available personnel for specific conditions listed as in Appendix D, that are imminently hazardous, i.e., likely to cause an accident or casualty before the train arrives at its destination. These conditions can be readily discovered by train crew members in the course of an ordinary inspection. However, neither inspection relieves the railroad of liability for failure to comply with all of the provisions of the Freight Car Safety Standards.

At locations where cars are inspected by someone who is not a designated inspector, the options for handling defective cars are limited to: (1) Setting the car out or (2) calling in a designated inspector to either repair the car or tag it for movement for repair in accord with § 215.9. An option no longer permitted is the movement of defective cars without bad order tags to a location where a designated inspector is on duty.

FRA believes that strict liability for defective cars coupled with the modified two-level inspection will enhance safety by providing the necessary incentive and flexibility for railroads to deploy their inspection and maintenance personnel to promptly discover and repair defective cars.

In response to RLEA's concern about the qualifications of persons who determine whether a defective car is

safe to move, FRA has amended § 215.11. While not adopting the "journeyman carman" suggestion, the amended section explicitly provides that determinations under § 215.9 (Movement for Repair) shall be made by a designated inspector having the qualifications prescribed in § 215.11 (Designated Inspectors).

Section 215.9 has been clarified by a new paragraph (d) that provides that the movement of defective cars for repair must be made in accord with restrictions imposed in a Special Notice for Repairs issued by an FRA or State inspector.

II. Other Issues. Defective Cars Received in Interchange: The AAR expressed concern that railroads would be held strictly liable for defects in cars received in interchange before they had an opportunity to inspect or otherwise to exercise any control over the cars. FRA has amended § 214.5(e)(4) to provide that a car that has been delivered in interchange is not "in service" until the receiving railroad accepts the car by moving it or otherwise exercising control over it. It should be noted, however, that the delivering railroad remains liable for each defective car it tenders in interchange.

Defective Roller Bearing

At issue in § 215.115 is the appropriate test for detecting defective roller bearings following a derailment. The position of AAR is that defects are more likely to be discovered by manual rotation of the roller bearing. FRA believes that the more effective method is to spin the wheel set, a technique employed by many railroads. Section § 215.115 has been amended to permit either method to be used. However, when a railroad opts to rotate the bearing manually, care must be exercised because the presence of lubricant and the fact that the bearing is not under load tend to reduce sounds made by small defects, whereas when the wheel set is rotated, the weight on the bearing magnifies these sounds.

Stenciling of Maintenance-of-Way Equipment

In response to the concern expressed in the AAR petition that the stenciling requirements in § 215.305 of the final rule might interfere with existing computer tracking systems, FRA has amended these requirements to provide that "MW" must be stenciled in letters at least 2 inches high at any location on each side of this equipment.

Door Safety Hangers

AAR requested a six year extension for compliance with § 215.121(d), which mandates that box car side doors be

equipped with safety hangers or the equivalent by September 1, 1980. FRA considers installation of safety hangers to be one of the most critical freight car safety requirements. Since 1974 there have been 7 fatalities directly attributable to box car door failure, 5 of which involved plug doors that did not have safety hangers. Accident reports for each fatality have been filed in the docket for this proceeding and are available for examination during regular business hours (9 a.m.-5 p.m.), in room 8211 Nassif Building, 400 Seventh Street, S.W., Washington, DC 20590.

FRA acknowledges that constraints of personnel and materials and design differences necessitate a limited extension of this deadline. According to the AAR, more than 100,000 plug door cars are not equipped with safety hangers. FRA has extended the deadline for completion of these modifications to July 1, 1982.

FRA, while granting the extension, reasserts its belief that the modifications are of utmost importance and should be expedited. Accordingly, petitions for further extensions beyond July 1, 1982, will not receive a favorable reception.

Both the AAR and RLEA petitions requested a number of other changes that were denied by FRA. Copies of these petitions together with the FRA letters of reply have been placed in the docket for this proceeding.

Impact Assessments

FRA has considered the economic, environmental, and small business impacts of this amendment to the Freight Car Safety Standards. This amendment has no discernable impact on the Regulatory Evaluation of the final rule published in the *Federal Register* (44 FR 77328). Since this amendment also meets the seven criteria that establish an action as a non-major action, it does not constitute a major action requiring an environmental assessment. Finally, FRA has determined that this amendment does not have any significant or special impact on small business.

In consideration of the foregoing, Part 215 of Title 49, Code of Federal Regulations, is amended, effective June 1, 1980, as set forth below:

Appendix D—[Added]

1. To the list of appendices at the beginning of the Part add:

Appendix D—Pre-departure inspection procedure

2. Paragraph (e) of § 215.5 is amended to read as follows:

§ 215.5 Definitions.

* * * * *

(e) "In service" when used in connection with a railroad freight car, means each railroad freight car subject to this part unless the car—

(1) Has a "bad order" or "home shop for repairs" tag or card containing the prescribed information attached to each side of the car and is being handled in accordance with § 215.9 of this part;

(2) Is in a repair shop or on a repair track;

(3) Is on a storage track and is empty;

or

(4) Has been delivered in interchange but has not been accepted by the receiving carrier.

* * * * *

3. Section 215.9 is amended by adding a new paragraph (d) that reads as follows:

§ 215.9 Movement of defective cars for repair.

* * * * *

(d) Nothing in this section authorizes the movement of a freight car subject to a Special Notice for Repairs unless the movement is made in accordance with the restrictions contained in the Special Notice.

4. Section 215.11 is amended to read as follows:

§ 215.11 Designated inspectors.

(a) Each railroad that operates railroad freight cars to which this part applies shall designate persons qualified to inspect railroad freight cars for compliance with this part and to make the determinations required by § 215.9 of this part.

(b) Each person designated under this section shall have demonstrated to the railroad a knowledge and ability to inspect railroad freight cars for compliance with the requirements of this part and to make the determinations required by § 215.9 of this part.

(c) With respect to designations under this section, each railroad shall maintain written records of—

- (1) Each designation in effect; and
- (2) The basis for each designation.

5. Section 215.13 is revised to read as follows:

§ 215.13 Pre-departure inspection.

(a) At each location where a freight car is placed in a train, the freight car shall be inspected before the train departs. This inspection may be made before or after the car is placed in the train.

(b) At a location where an inspector designated under § 215.11 is on duty for the purpose of inspecting freight cars, the inspection required by paragraph (a)

of this section shall be made by that inspector to determine whether the car is in compliance with this part.

(c) At a location where a person designated under § 215.11 is not on duty for the purpose of inspecting freight cars, the inspection required by paragraph (a) shall, as a minimum, be made for those conditions set forth in Appendix D to this part.

(d) Performance of the inspection prescribed by this section does not relieve a railroad of its liability under § 215.7 for failure to comply with any other provision of this part.

6. Paragraph (b)(1)(B) and (b)(2)(B) of § 215.115 are amended to read as follows:

§ 215.115 Defective roller bearing.

(b) * * *

(1) * * *

(A) * * *

(B) Spinning freely its wheel set or manually rotating the bearing to determine whether the bearing makes any unusual noise.

(2) * * *

(A) * * *

(B) It makes any unusual noise when its wheel set is spun freely or the bearing is manually rotated.

7. Paragraph (d) of § 215.121 is amended as follows:

§ 215.121 Defective car body.

(d) After July 1, 1982, the car is a box car and its side doors are not equipped with operative safety hangers, or the equivalent, to prevent the doors from becoming disengaged.

8. Paragraph (b) of § 215.305 is revised to read as follows:

§ 215.305 Stenciling of maintenance of-way equipment.

(b) The letters "MW" must be—
(1) at least 2 inches high; and
(2) placed on each side of the car.

9. To the appendices of Part 215, the following Appendix is added:

Appendix D—Pre-departure Inspection Procedure

At each location where a freight car is placed in a train and a person designated under § 215.11 is not on duty for the purpose of inspecting freight cars, the freight car shall, as a minimum, be inspected for the imminently hazardous conditions listed below that are likely to cause an accident or casualty before the train arrives at its destination. These conditions are readily

discoverable by a train crew member in the course of a customary inspection.

1. *Car Body:*
 - (a) Leaning or listing to side.
 - (b) Sagging downward.
 - (c) Positioned improperly on truck.
 - (d) Object dragging below.
 - (e) Object extending from side.
 - (f) Door insecurely attached.
 - (g) Broken or missing safety appliance.
 - (h) Lading leaking from a placarded hazardous material car.
 2. Insecure coupling.
 3. Overheated wheel or journal.
 4. Broken or extensively cracked wheel.
 5. Brake that fails to release.
 6. Any other apparent safety hazard likely to cause an accident or casualty before the train arrives at its destination.
- (Secs. 202 and 209, 84 Stat. 971 and 975, 45 U.S.C. 431 and 438; and Sec. 1.49(n) of the regulations of the Office of the Secretary of Transportation, 49 CFR 1.49(n).)

Issued in Washington, D.C. on April 15, 1980.

John M. Sullivan,
Administrator.

[FR Doc. 80-11986 Filed 4-15-80; 3:30 pm]

BILLING CODE 4910-06-M

Coast Guard

46 CFR Part 56

[CGD 79-083]

Tank Vent Piping for Great Lakes Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule amends the regulations regarding tank vent piping for Great Lakes vessels by eliminating language contained in § 56.50-85 of Title 46 to conform with the provisions of § 45.133. This action eliminates a source of confusion and establishes a uniform requirement for tank vent piping on Great Lakes vessels.

EFFECTIVE DATE: The rule is effective on May 21, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. D. L. Ewing (202) 426-2187.

SUPPLEMENTARY INFORMATION: On January 7, 1980, the Coast Guard published a proposed rule (45 FR 1431) concerning this amendment. The public was given until February 21, 1980, to submit comments. No comments were received and no public hearing was held. The proposed rule is therefore made final without change and without further discussion.

Drafting information: The principal persons involved in drafting this rule are Mr. D.L. Ewing, Project Manager, Office of Merchant Marine Safety, and Lieutenant Jack Orchard, Project Attorney, Office of the Chief Counsel.